

Child Custody

The information in this document is general in nature. It is intended to educate and assist our community of clients and prospective clients, but it is not intended as legal advice for particular cases, and no one should rely on it as such.

What are my options for child custody?

If you are getting divorced and/or seeking custody in the U.S., there are two varieties of child custody you can pursue. The first is **primary physical custody**, where you are the primary caretaker of the child(ren), responsible for their immediate care and supervision. The second is **legal custody**, which is the responsibility for making important decisions about the child(ren), including travel, education, and healthcare.

Sometimes both parents retain legal custody of their children after a divorce, although not always. In the interest of avoiding disputes, courts may award decision-making authority to only one parent. Physical custody is usually awarded to only one parent, and joint physical custody tends to occur only where the parents live in the same community and can minimize the inconsistencies involved in raising children in two different households. Talk to a legal assistance attorney about which form of custody you intend to pursue and to discuss your options.

Can I pursue child custody at the same time as my divorce?

It is often most convenient for parties to resolve divorce and custody in a single court case, but there are legal rules that can get in the way. The most frequent problem is “jurisdiction.” Jurisdiction means that a court has the legal authority to hear your case, and jurisdiction is different in custody cases than it is in divorce cases. Courts will take jurisdiction over divorce cases if either party is a legal resident of that state (and sometimes if one of the parties is a servicemember stationed in that state), but the same courts will often only take jurisdiction over the custody determination if your child has been living in that state for the previous six months. For servicemembers and their dependents on Okinawa presents an obvious problem. There are some exceptions to the six-month rule which may enable you to pursue your divorce and custody case in the same state, but you will have to speak with a legal assistance attorney about these issues.

Am I able to get primary physical custody even though I am an active-duty servicemember?

It is possible to get primary physical custody even if you are active duty and your spouse is not. Courts consider which parent has had the primary caretaking role in the children’s lives, even as they acknowledge the frequent and irregular moves that may occur during military service. Sometimes servicemembers have certain factors in their favor, such as the quality of life and schools on military bases. If you are part of a unit that deploys frequently, however, gaining primary physical custody is a challenge that you should discuss with an attorney.